

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Paddie

H.B. No. 4042

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the sale by certain alcoholic beverage permit holders  
3 of alcoholic beverages at auction.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 53, Alcoholic Beverage Code, is amended  
6 to read as follows:

7 CHAPTER 53. TEMPORARY [~~CHARITABLE~~] AUCTION PERMIT

8 Sec. 53.001. AUTHORIZED ACTIVITIES. The holder of a  
9 temporary [~~charitable~~] auction permit may auction alcoholic  
10 beverages for consumption off premises to raise money to support  
11 the stated purpose [~~charitable works~~] of the permit holder.

12 Sec. 53.002. FEE. (a) The state fee for a temporary  
13 [~~charitable~~] auction permit is \$25.

14 (b) A local fee may not be charged for the application for or  
15 issuance of a temporary [~~charitable~~] auction permit.

16 Sec. 53.003. DURATION OF PERMIT. A temporary [~~charitable~~]  
17 auction permit may be issued for a period of not more than five  
18 days.

19 Sec. 53.004. PERMIT. The commission may issue a temporary  
20 [~~charitable~~] auction permit only to:

21 (1) an organization that is exempt from taxation under  
22 Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section  
23 501(a)) by being listed under Section 501(c)(3), Internal Revenue  
24 Code of 1986 (26 U.S.C. Section 501(c)(3)); or

1           (2) a person or group of persons who are subject to  
2 recordkeeping requirements under Chapter 254, Election Code.

3           Sec. 53.005. AUCTION LOCATION. (a) The holder of a  
4 temporary [~~charitable~~] auction permit may conduct an auction in any  
5 area where the sale of the type of alcoholic beverage to be  
6 auctioned is authorized by a local option election.

7           (b) The holder of a temporary [~~charitable~~] auction permit  
8 may conduct an auction at a premises of another permit or license  
9 holder if:

10           (1) the alcoholic beverages to be auctioned are kept  
11 separate from the alcoholic beverages sold, stored, or served at  
12 the premises; and

13           (2) the alcoholic beverages subject to the auction,  
14 whether sold or unsold, are removed from the premises immediately  
15 following the auction.

16           Sec. 53.006. AUCTION NOTICE. Before an auction is held, the  
17 holder of a temporary [~~charitable~~] auction permit shall provide to  
18 the branch office of the commission located closest to the auction  
19 site written notice of:

20           (1) the date, time, and place of the auction; and

21           (2) the inventory of the alcoholic beverages to be  
22 auctioned.

23           Sec. 53.007. DISPOSITION OF PROCEEDS. The proceeds from an  
24 auction authorized by this chapter shall be deposited to the  
25 account of the holder of a temporary [~~charitable~~] auction permit.

26           Sec. 53.008. PROHIBITED ACTIVITIES. The holder of a  
27 temporary [~~charitable~~] auction permit may not:

1           (1) auction distilled spirits, wine, ale, or malt  
2 liquor that has not been donated to the organization;

3           (2) auction alcoholic beverages if any taxes are owed  
4 on the beverages; and

5           (3) [~~conduct more than one auction during each~~  
6 ~~calendar year; and~~

7           [~~(4)~~] pay a commission or promotional allowance to a  
8 person to:

9                   (A) arrange or conduct an auction under this  
10 chapter; or

11                   (B) arrange the donation of alcoholic beverages  
12 to be auctioned by the organization.

13           Sec. 53.009. RULES. (a) The commission shall adopt rules  
14 governing the issuance and use of a temporary [~~charitable~~] auction  
15 permit.

16           (b) The commission shall adopt rules establishing penalties  
17 for the violation of rules adopted under this chapter. A penalty  
18 established by the commission under this subsection may not exceed  
19 a penalty that the commission may impose on the holder of another  
20 temporary license or permit.

21           SECTION 2. Section 151.461(5), Tax Code, is amended to read  
22 as follows:

23                   (5) "Retailer" means a person required to hold:

24                           (A) a wine and beer retailer's permit under  
25 Chapter 25, Alcoholic Beverage Code;

26                           (B) a wine and beer retailer's off-premise permit  
27 under Chapter 26, Alcoholic Beverage Code;

1 (C) a temporary wine and beer retailer's permit  
2 or special three-day wine and beer permit under Chapter 27,  
3 Alcoholic Beverage Code;

4 (D) a mixed beverage permit under Chapter 28,  
5 Alcoholic Beverage Code;

6 (E) a daily temporary mixed beverage permit under  
7 Chapter 30, Alcoholic Beverage Code;

8 (F) a private club registration permit under  
9 Chapter 32, Alcoholic Beverage Code;

10 (G) a certificate issued to a fraternal or  
11 veterans organization under Section 32.11, Alcoholic Beverage  
12 Code;

13 (H) a daily temporary private club permit under  
14 Subchapter B, Chapter 33, Alcoholic Beverage Code;

15 (I) a temporary [~~charitable~~] auction permit  
16 under Chapter 53, Alcoholic Beverage Code;

17 (J) a retail dealer's on-premise license under  
18 Chapter 69, Alcoholic Beverage Code;

19 (K) a temporary license under Chapter 72,  
20 Alcoholic Beverage Code; or

21 (L) a retail dealer's off-premise license under  
22 Chapter 71, Alcoholic Beverage Code, except for a dealer who also  
23 holds a package store permit under Chapter 22, Alcoholic Beverage  
24 Code.

25 SECTION 3. This Act takes effect September 1, 2017.

ADOPTED

MAY 23 2017

*Larry Saw*  
Secretary of the Senate

By: Whitmire

H.B. No. 4042

Substitute the following for H.B. No. 4042

By: Campbell

C.S. \_\_\_B. No. \_\_\_\_\_

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11 the stated purpose [~~charitable works~~] of the permit holder.

12 Sec. 53.002. FEE. (a) The state fee for a temporary  
13 [~~charitable~~] auction permit is \$25.

14 (b) A local fee may not be charged for the application for or  
15 issuance of a temporary [~~charitable~~] auction permit.

16 (c) The commission may not impose a surcharge for a  
17 temporary auction permit.

18 Sec. 53.003. DURATION OF PERMIT. A temporary [~~charitable~~]  
19 auction permit may be issued for a period of not more than five  
20 days.

21 Sec. 53.004. PERMIT. The commission may issue a temporary  
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9 (b) The holder of a temporary [~~charitable~~] auction permit  
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21 site written notice of:

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27 account of the holder of a temporary [~~charitable~~] auction permit.

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3           (1) auction distilled spirits, wine, ale, or malt  
4 liquor that has not been donated to the organization;

5           (2) auction alcoholic beverages if any taxes are owed  
6 on the beverages; and

7           (3) [~~conduct more than one auction during each~~  
8 ~~calendar year; and~~

9           [~~4~~] pay a commission or promotional allowance to a  
10 person to:

11           (A) arrange or conduct an auction under this  
12 chapter; or

13           (B) arrange the donation of alcoholic beverages  
14 to be auctioned by the organization.

15           Sec. 53.009. RULES. (a) The commission shall adopt rules  
16 to ensure the applicant qualifies under this chapter for  
17 [governing] the issuance and use of a temporary [~~charitable~~]  
18 auction permit.

19           (b) The commission shall adopt rules establishing penalties  
20 for the violation of rules adopted under this chapter. A penalty  
21 established by the commission under this subsection may not exceed  
22 a penalty that the commission may impose on the holder of another  
23 temporary license or permit.

24           SECTION 2. Section 151.461(5), Tax Code, is amended to read  
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2 (B) a wine and beer retailer's off-premise permit  
3 under Chapter 26, Alcoholic Beverage Code;

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5 or special three-day wine and beer permit under Chapter 27,  
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8 Alcoholic Beverage Code;

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10 Chapter 30, Alcoholic Beverage Code;

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12 Chapter 32, Alcoholic Beverage Code;

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24 (L) a retail dealer's off-premise license under  
25 Chapter 71, Alcoholic Beverage Code, except for a dealer who also  
26 holds a package store permit under Chapter 22, Alcoholic Beverage  
27 Code.

1           SECTION 3. This Act takes effect September 1, 2017.

FLOOR AMENDMENT NO. 1

BY: Whitice  
(Whitmore)

1 Amend C.S.H.B. No. 4042 (senate committee printing) in  
2 SECTION 1 of the bill, in amended Section 53.009(a), Alcoholic  
3 Beverage Code (page 2, lines 26-27), by striking "to ensure the  
4 applicant qualifies under this chapter for [governing]" and  
5 substituting "governing".

**ADOPTED**  
✓✓

MAY 23 2017

*Lacey Spaw*  
Secretary of the Senate

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 23, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4042** by Paddie (Relating to the sale by certain alcoholic beverage permit holders of alcoholic beverages at auction.), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would amend the Alcoholic Beverage Code to authorize the Texas Alcoholic Beverage Commission (TABC) to issue a temporary auction permit to a person or group of persons who are subject to recordkeeping requirements under Chapter 254, Election Code. The bill would prohibit the TABC from imposing a surcharge for a temporary auction permit. The bill would also eliminate the prohibition to conduct more than one auction during each calendar year by a permit holder.

The bill would amend the Tax Code to make conforming changes to certain terms defining a retailer.

It is assumed the costs for TABC to implement the provisions of the bill can be absorbed within existing resources.

The Comptroller of Public Accounts reports the potential number of new applicants for a temporary auction permit is unknown and the revenue impact cannot be determined.

The bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission

**LBB Staff:** UP, CL, AI, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**May 19, 2017**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4042** by Paddie (Relating to the sale by certain alcoholic beverage permit holders of alcoholic beverages at auction.), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Alcoholic Beverage Code to authorize the Texas Alcoholic Beverage Commission (TABC) to issue a temporary auction permit to a person or group of persons who are subject to recordkeeping requirements under Chapter 254, Election Code. The bill would prohibit the TABC from imposing a surcharge for a temporary auction permit. The bill would also eliminate the prohibition to conduct more than one auction during each calendar year by a permit holder.

The bill would amend the Tax Code to make conforming changes to certain terms defining a retailer.

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The Comptroller of Public Accounts reports the potential number of new applicants for a temporary auction permit is unknown and the revenue impact cannot be determined.

The bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission

**LBB Staff:** UP, CL, AI, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 5, 2017**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4042** by Paddie (Relating to the sale by certain alcoholic beverage permit holders of alcoholic beverages at auction.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Alcoholic Beverage Code to authorize the Texas Alcoholic Beverage Commission to issue a temporary auction permit to a person or group of persons who are subject to recordkeeping requirements under Chapter 254, Election Code. The bill would also eliminate the prohibition to conduct more than one auction during each calendar year by a permit holder.

The bill would amend the Tax Code to make conforming changes to certain terms defining a retailer.

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The Comptroller of Public Accounts reports the potential number of new applicants for a temporary auction permit is unknown and the revenue impact cannot be determined.

The bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission

**LBB Staff:** UP, CL, AI, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 14, 2017**

**TO:** Honorable John Kuempel, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB4042** by Paddie (Relating to the sale by certain alcoholic beverage permit holders of alcoholic beverages at auction.), **As Introduced**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Alcoholic Beverage Code to authorize the Texas Alcoholic Beverage Commission to issue a temporary auction permit to a person or group of persons who are subject to recordkeeping requirements under Chapter 254, Election Code. The bill would also eliminate the prohibition to conduct more than one auction during each calendar year by a permit holder.

The bill would amend the Tax Code to make conforming changes to certain terms defining a retailer.

The Texas Alcoholic Beverage Commission reports the costs to implement the provisions of the bill can be absorbed within existing resources.

The Comptroller of Public Accounts reports the potential number of new applicants for a temporary auction permit is unknown and the revenue impact cannot be determined.

The bill would take effect September 1, 2017.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 458 Alcoholic Beverage Commission

**LBB Staff:** UP, CL, AI, FR